



**City of Flagstaff  
TEMPORARY ENCROACHMENT PERMIT  
APPLICATION**

211 West Aspen Avenue, Flagstaff, AZ 86001  
(928) 779-7685 / FAX (928) 779-7684

**ENC**

Permit Number  
EENC-200\_\_\_\_\_

*Please Type or Print*

**SITE ADDRESS:** \_\_\_\_\_ **STE#:** \_\_\_\_\_

**Parcel #:** \_\_\_\_\_ **Business Name:** \_\_\_\_\_

**Business Owner Name:** \_\_\_\_\_ **City Sales Tax #:** \_\_\_\_\_

**Local Contact or Manager:** \_\_\_\_\_ **Phone: (     )** \_\_\_\_\_

**Shopping Center/Building Name:** \_\_\_\_\_

**Business Mailing Address:** \_\_\_\_\_

**City – State - Zip:** \_\_\_\_\_

**Location of Encroachment:** \_\_\_\_\_

**Description of Encroachment (if a peddler, specify mobile or stationary):** \_\_\_\_\_

**Justification of Encroachment:** \_\_\_\_\_

**Starting Date:** \_\_\_\_\_ **Completion Date:** \_\_\_\_\_

**Checklist of items to be submitted for:**

**A. Typical Dumpster Encroachment (Included in residential building permit)**

1. Completed application
2. Sketch of location including 24-hour traffic control plan

**B. Typical Special Event Parking Encroachment**

1. Completed application
2. Sketch of location including all existing "parking" signs

**C. Typical Sidewalk Café Encroachment**

1. Completed application
2. Dimensioned drawing of the proposed sidewalk café
3. Certificate of General Liability Insurance naming the City of Flagstaff as additional insured
4. Note that the value of certificate is dependant upon the type of sales, see Section 08-03-002-0005-A2 of the attachment

**D. Typical Peddler Encroachment**

1. Completed application and submission of \$100 maintenance fee
2. North Downtown Business District (NDBD) location and number noted on application
3. Dimensioned drawing of NDBD site
4. Proof of City Sales Tax License
5. Certificate of General Liability Insurance naming the City of Flagstaff as additional insured
6. Note that the value of Certificate is dependant upon the type of sales, see Section 08-03-002-0005-A2 of the attachment

**\*Please review and sign the encroachment agreement on back side of this application\***

### **TEMPORARY ENCROACHMENT AGREEMENT**

In consideration of the granting of this permit, the applicant agrees to:

1. Apply for the Temporary Encroachment Permit at least five calendar days prior to commencing the proposed encroachment.
2. Fill out the application in its entirety. Incomplete applications will not be processed.
3. Submit the application with two copies of a plan or sketch of suitable scale, showing a description and dimensions of the proposed encroachment, with sufficient detail for the City to determine its impact on the right-of-way and adjacent properties.
4. The permittee shall indemnify the City of Flagstaff from and against all liability or responsibility for any accident, loss, damage to persons or property or expense (including reasonable attorney fees and court cost), arising from and/or occurring as a result of any death, bodily injury, personal injury or property damage of any kind or description that may directly or indirectly relate to or stem from any work or activities under the terms of this permit. In essence, the Permittee shall assume all said liabilities and/or responsibilities and protect and/or restore all property both public and private.
5. Submit a copy of their Certificate of General Liability Insurance, when applicable, naming the City as an additional insured. This insurance shall in no way limit the extent or enforcement of the hold harmless agreement. The required dollar value, if applicable, placed on the certificate of insurance is described within the City North Downtown Business District Encroachment Policy, Section 8-03-002-00005-A2 of the attachment.

In an effort to minimize the inconvenience of submitting a certificate of insurance for each permit, the applicant may submit the certificate of insurance on an annual basis. These insurance requirements are not required for certain specific encroachments including, but not limited to, encroachments by trash dumpsters, temporary traffic control changes, and temporary parking prohibition waivers.

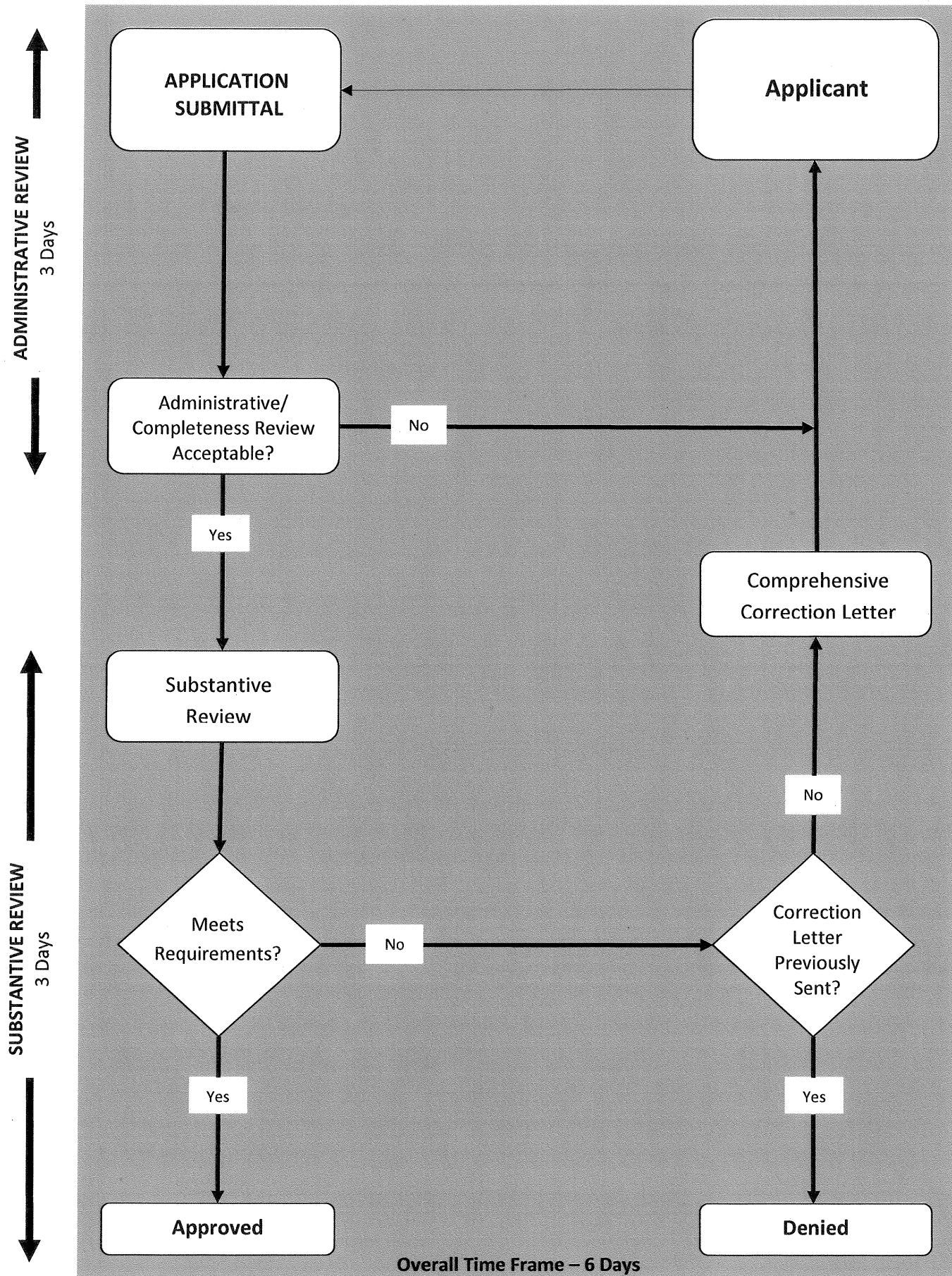
6. Submit a traffic control plan for approval should the contemplated encroachment require traffic, pedestrian, street, or sidewalk restrictions / closures.

The Permittee will be notified when the permit is ready to be picked up (usually within 3 business days).

**I HEREBY CERTIFY THAT THE INFORMATION SET FORTH ON THIS FORM IS COMPLETE AND ACCURATE AND DO HEREBY AGREE TO COMPLY WITH ALL APPLICABLE CODES OF THE CITY OF FLAGSTAFF AND THE STATE OF ARIZONA AND WITH ANY CONDITIONS ATTACHED HERETO:**

**Applicant Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**DOWNTOWN ENCROACHMENT PERMIT**  
**Administrative and Substantive Review Process**



Flagstaff City Code

DIVISION 8-03-002

NORTH DOWNTOWN BUSINESS DISTRICT ENCROACHMENT POLICY

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(Ord. 1922, 12/17/96)

**SECTION 8-03-002-0002**

**PURPOSE:**

The purpose of this Encroachment Ordinance is:

- A. To create a vibrant, historic district that will include not only privately owned retail buildings but also public spaces that are creatively used as both thoroughfares and as public space for commerce and artistic endeavors.
- B. To ensure that the public ways in the North Downtown Business District are kept free from obstructions, nuisances, or unreasonable encroachments which destroy, in whole or in part, or materially impair, their use as public thoroughfares.
- C. To provide for the safety of pedestrian and other human interaction on sidewalks, and for the orderly control of merchants, including peddlers using the sidewalk area. (Ord. 1922, 12/17/96)

**SECTION 8-03-002-0003**

**GLOSSARY:**

**A. WORD USAGE**

In the interpretation of this Encroachment Ordinance, except when the context clearly requires otherwise: words used or defined in one tense or form shall include other tenses and derivative forms, words in the singular number shall include the plural number, and words in the plural number shall include the singular number; and the masculine gender shall include the feminine, and vice-versa.

**B. DEFINITIONS**

When used in this Encroachment Ordinance, each of the following terms shall have the meaning given as follows:

**Abutting Owner.** The owner of real property abutting a public right-of-way.

**Access.** A means of vehicular or pedestrian approach or entry to or exit from property, from a street, highway or public sidewalk.

**Adjacent.** Next to; contiguous, but not necessarily touching or abutting.

**Alley.** A recorded public way affording a secondary means of vehicular access to abutting property and not intended for general traffic circulation.

**American with Disabilities Act.** The federal American with Disabilities Act of 1990, Public Law No. 101-336, 104 Stat. 327, appearing generally at 42 U.S.C. §§ 12101 *et seq.*

**Building.** A structure built, maintained, or intended to be used for the shelter or enclosure of persons, animals, or property of any kind. The term is inclusive of any part thereof. Where independent units with separate entrances are divided by party walls, each unit is a building.

**City.** The City of Flagstaff, Arizona.

**City Code.** The code of City ordinances compiled, consolidated and arranged in accordance with Article VII, Section 15 of the Council-Manager Charter of Flagstaff, as the same may be amended from time to time.

**City Standards.** The design, performance, and construction standards and specifications on file with the City Clerk.

**Community Development Director.** The City's Director of Community Development.

**Council.** The City Council of the City of Flagstaff.

**Curb Face, or Face of the Curb.** The side of the curb facing and closest to the street.

**Development Review Board or DRB.** The Development Review Board of the City, being a technical review committee authorized and established by the Council for the purpose of review and recommendations of subdivision and minor land divisions applications and other development plans, which is composed of the heads of the following City departments or divisions or their duly authorized representatives: Engineering, Building Inspection, and Planning Division, Public Works, Utilities and Fire Department.

**Encroachment.** An intrusion into or invasion of the public right-of-way, diminishing its width or area, but without closing it to public travel.

**Marquee.** A permanent roofed structure projecting over the entrance to a building, which is attached to and supported by the building. K:\Users\Engineering\Forms\ROW, Encroachment, ROW Utility-Applications\North Downtown Business District Encroachment Policy.doc

**North Downtown Business District.** The area bounded by the right-of-way centerline of Humphreys Street (U.S. Route 180) on the West, Cherry Avenue on the North, Verde Street on the East, and Route 66 on the South.

**Obstruct.** To block; to interpose obstacles; to render impassable; to fill with barriers or impediments, as to obstruct a road or way.

**Peddler (Stationary or Mobile).** Any person who sells in the public right-of-way any type of service or tangible personal property, including but not limited to food and drink, from, at or adjacent to a portable stand, pushcart or other vehicle in which such tangible personal property is carried.

A Stationary Peddler is one who performs his/her peddling activity at a single permitted location.

A Mobile Peddler is one who is continuously moving along the sidewalk, momentarily stopping to display or sell his/her wares to pedestrian customers.

**Permanent.** Continuing or enduring in the same state, status, place or the like, without fundamental or marked change; fixed or intended to be fixed.

**Permit.** A written warrant, license or other instrument issued by the City, granting permission or authority to engage in specified conduct not forbidden by law, but not allowed without such permission or authority.

**Public Nuisance.** An act, condition, occupation or structure that has one or more of the following effects or characteristics: it disturbs or interferes with the lawful use of property by the public, or a limited but indefinite part thereof; it is dangerous to public health or offensive to community moral standards; or it unlawfully obstructs the public in the lawful use of public property or the public right-of-way.

**Public Right-of-Way or Public Way.** Public land that has been set aside for the purpose of vehicular and/or pedestrian travel by the public, or other public use, such as utilities, including subsurface, surface and air rights.

**Restaurant or Café.** An establishment whose principal business is the sale of food and/or beverage to customers in a ready-to-consume state, which food and beverage are generally consumed within the restaurant building.

**Sidewalk.** That portion of a public street or highway designed for the use of pedestrians.

**Storekeeper.** Any retail business establishment or person engaged in a retail business in or from a building or other real property owned or leased for such purpose.

**Street.** Any existing public street, alley, avenue, boulevard, road, lane, parkway, place, bridge, viaduct or easement primarily intended for public vehicular or pedestrian access, or a street shown on a plat duly filed and recorded in the County Recorder's Office. A street includes all land within the street right-of-way

whether improved or unimproved, and includes such improvements as pavement, shoulders, curbs, gutters, sidewalks, parking space, bridges, and viaducts.

Structure. Anything constructed or erected in a fixed location on the ground or which is attached to something having a fixed location on the ground, including a fence, satellite dish, or free-standing wall.

Subsurface. That which is below the surface (natural or graded) of the street or sidewalk.

Temporary. Lasting for a short, brief or designated time only, existing or continuing for a limited time.

Utilities. Businesses, installations, services or facilities, engaged in regularly supplying the public with some commodity of service which is of public consequence and need, such as electricity, gas, water, transportation or telephone service. (Ord. 1922, 12/17/96)

#### **SECTION 8-03-002-0004      GENERAL PRINCIPLES:**

- A. The right of the public to use public ways in a lawful manner is paramount. The public ways shall be kept free from private obstructions, nuisances, or unreasonable encroachments which destroy, in whole or in part, or unreasonably impair their use as public thoroughfares.
- B. The primary purpose of the downtown sidewalks and other public open spaces is to provide for the circulation of pedestrians, access to private property and delivery of goods, and for human interaction and other pedestrian-oriented activities and amenities.
- C. There is no legal or inalienable right for any person to use public ways for the purpose of private business or gain.
- D. No trader, merchant, storekeeper or vendor shall display or keep goods on or in the public way, or display or keep goods or otherwise conduct business in such a manner as to cause other motor vehicle to frequently stop in order to purchase, load or unload such goods. No claim that any of the foregoing conduct is necessary for the conduct of business will constitute a defense to an enforcement action under this Ordinance.
- E. Except as otherwise explicitly provided herein, the creation, conduct, maintenance or continuation of any encroachment of the public right-of-way by any private party without a valid permit for such encroachment shall be unlawful.
- F. No encroachment permit hereunder shall be intended to grant any title to any public way or any part thereof.
- G. The obstruction of any public way by any private party without an encroachment permit from the City constitutes a public nuisance, (regardless of the question of the comparative benefit to the public) and, upon notification from the City, such obstruction shall be promptly removed from the public right-of-way.
- H. Notwithstanding the regulation of any activity or structure under any other provision of the City Code (e.g., Uniform Building Code, Land Development Code), no encroachment of the public right-of-way shall be permitted without an encroachment permit, except as may otherwise be provided herein.
- I. All structures permitted hereunder shall comply in all respects with the requirements of all other applicable laws, rules, regulations and ordinances.
- J. It is neither the City's policy nor its responsibility to provide a good location or guarantee a profit for an entrepreneur who wishes to use public right-of-way to conduct private business.
- K. No permit will be issued for any encroachment that materially and unduly interferes with the right of the public to use the right-of-way.
- L. This encroachment ordinance shall apply to all private activities, whether conducted for the purpose of business or gain or otherwise; this ordinance does *not* apply to the activities or structures of the City, the Arizona Department of Transportation, any duly franchised or licensed public utility, any public utility



holding a permit or franchise from the State of Arizona, or any other enterprise of similar nature in being of general public concern (such as cable television providers), who have a duly executed license from the City to use the public right-of-way.

- M. In keeping with the primary purpose of the sidewalk for pedestrian traffic, and of the street for vehicular transportation, no automobile, truck or other motor vehicle or facsimile thereof may be located upon the sidewalk (except as may be permitted in conjunction with a special event under Section 8-03-002-0005.E hereof or as otherwise specifically allowed herein), nor shall any commercial activity (other than taxis, busses, tour busses and similar transportation services) be conducted in the street. (Ord. 1922, 12/17/96)

#### **SECTION 8-03-002-0005      PERMITTED ENCROACHMENTS:**

- A. GENERAL. The City may, but shall not be required to, issue permits allowing encroachment of the public right-of-way, on the following conditions.
1. All permitted encroachments of the sidewalk shall maintain a minimum sidewalk width of 5 feet.
  2. The permittee shall:
    - a. Agree to indemnify the City and its officials, employees, agents, successors and assigns, and hold them, and each of them, harmless for and from any and all losses, claims, demands, causes of action, suits, and damages, in law or in equity, of whatever kind and nature whatsoever, present or contingent, known or unknown, in any way arising from, relating to or connected with the permittee's activities undertaken pursuant to the encroachment permit;
    - b. agree to protect and restore all property, both public and private, damaged as a result of the permittee's activities thereunder; and
    - c. obtain and maintain a policy of commercial general liability insurance that shall meet or exceed the following requirements in respect to each activity specified:
      - (1) OBSTACLES OR PRODUCTS SOLD IN THE RIGHT-OF-WAY: One Hundred Thousand Dollars (\$100,000.00)
      - (2) FOOD, CONSUMABLES AND COSMETICS SOLD IN THE RIGHT-OF-WAY: Three Hundred Thousand Dollars (\$300,000.00).
      - (3) ALCOHOL SOLD IN THE RIGHT-OF-WAY: Liquor Liability of one million dollars (\$1,000,000.00) naming the City as an additional insured. The applicant shall provide the City with two (2) copies of a Certificate of Insurance evidencing the specified policy prior to the issuance of any encroachment permit.
  3. Other than permitted encroachments by structures, any space or encroachment for which a permit is issued hereunder shall be used only by the applicant or such other persons listed in the permit application, and only for the purpose described in the permit, and shall be transferable. Other than permitted encroachments by structures the sale or other transfer of more than fifty percent (50%) of any business or entity that holds an encroachment permit will be considered a transfer of such permit and shall render such permit void.
  4. Abandonment of an encroachment for which a permit is issued shall render such permit void. With the exception of potted plants as specified in Section 8-03-002-0005.C.3, a permittee may be deemed to have abandoned a permitted encroachment if the permittee does not use the space for which the permit is issued for the permitted use at any time for a period of two consecutive weeks, except for such time(s) that emergency, inclement weather or other circumstances beyond the permittee's control shall render such use impracticable, and the permittee notifies the City of such impracticability within two (2) weeks of the onset of such circumstance (which notice will be waived if rendered impracticable by the same circumstance). (Ord. 1952, 09/02/97)
  5. Any encroachment permit may be temporarily suspended when construction or repair of the street, sidewalk, utilities, or building or other structure in the immediate vicinity would create a hazard for the



permittee or his/her patrons, or if the operation of the business under the permit would interfere with the safe and expeditious completion of such construction or repair. In such cases, the City may allow the permittee to use another space, if appropriate, for the duration of the suspension or the remaining time specified by the permit, whichever is shorter.

6. Existing or previously issued permits will generally take precedence over subsequently issued permits; all permits shall therefore be subject to and limited by all previously issued permits, unless otherwise expressly provided.
7. The provisions of and this Section 8-03-002-0005.A shall, except as otherwise expressly provided, apply to all permitted encroachments, in addition to any and all other requirements of this Ordinance specific to any such encroachment.
8. Other than permitted encroachments by structures, an encroachment permit may be revoked for any reason, including but not limited to: health, safety, or improvement projects such as Beautification Commission sponsored plans or Historical Preservation Commission sponsored projects.

**B. PERMITTED ENCROACHMENTS BY STRUCTURES.** The City may issue permits for certain fixed continuing minor encroachments of public ways, or fixed encroachments indefinite as to time or duration, such as awnings, signs, balconies, bay windows, cornices, columns, pillars, shutters, roofs, show windows, ornamental projections, wire across streets, marquees, coal chutes, basement access or porticoes, upon the following conditions:

1. **Overhead Encroachments.** All awnings, signs, balconies, bay windows, cornices, shutters, roofs, show windows, ornamental projections, wires across streets, marquees, porticoes constructed or maintained over or across the public right-of-way shall be securely and safely attached to and supported by the structure to which it is attached, and shall extend no closer than two (2) feet to a vertical line drawn from the face of the curb. The lowest part of any awning or other such overhead encroachment shall be no closer than eight (8) feet from the sidewalk surface.
2. **Excavations and Other Subsurface Encroachments.** The City may issue permits for excavations and other subsurface encroachments subject to the need for installation and maintenance of utilities.
3. **Columns, Coal Chutes or Basement Access.** In the event that the Flagstaff Historic Preservation Commission has created a design review or similar district including some or part of the North Downtown Business District, then all columns, pillars, coal chutes, basement access or similar structures within the jurisdiction of such district must, in addition to meeting all other requirements of this Ordinance, be reviewed and approved by the Historic Preservation Commission or other similar districts.

**C. OTHER ENCROACHMENTS FOR THE PLACEMENT OF OBJECTS OR FOR CONSTRUCTION OR REPAIR.** Subject to the general requirements of Section 8-03-002-0005.A hereof, the City may issue permits for temporary encroachments of the public way, when, in the City's sole discretion, such encroachment may enhance the ambience of the downtown area or may be reasonably necessary for an abutting owner's transaction of business or conduct of exterior repairs to its building, including but not limited to the following:

1. **Construction Encroaching into Public Ways.** Temporary obstructions and encroachments of public ways in connection with the erection and repair of buildings and other structures may be permitted, provided that such obstructions or encroachment does not interfere unreasonably with the rights of adjacent property owners.
2. **Bicycle Parking Racks.** Bicycle parking racks shall be placed so the rack and the bicycles parked at the rack conform to the location and clearance requirements of Section 8-03-002-0005.A.
3. **Potted Plants.** All plants, trees, shrubs, and flowers shall be placed in containers that are aesthetically compatible with the downtown area. Said containers shall be constructed in such a manner that no soil, fertilizer or other deleterious material shall leak, leach or spill onto the public sidewalk. In the interest of pedestrian safety and to accommodate snow removal operations, potted

plants shall be removed from the sidewalks area no later October 31<sup>st</sup> and placed no earlier than May 1<sup>st</sup> of each year.

4. **Newspaper Vending Machines.** Notwithstanding anything to the contrary contained herein, an encroachment permit shall not be required for newspaper vending machines. Such vending machines shall nonetheless be placed in a manner to allow for the safe and unrestricted use of the sidewalk by the public and shall be placed a minimum of two (2) feet from the face of curb. Any regulation or restriction on the placement of newspaper vending machines shall be location-specific and shall apply to all such machines equally.
5. **Mailboxes.** Notwithstanding anything to the contrary contained herein, an encroachment permit shall not be required for mail receptacles owned by the U.S. Postal Service.

D. **COMMERCIAL ENCROACHMENTS.** Although the downtown area is generally congested and its open spaces appear to be fully utilized, there are certain locations on the public sidewalks where temporary commercial activities, if sufficiently minor, properly managed and appropriately contained, might not conflict with the sidewalk's primary purposes, but would rather contribute to the overall ambiance of the downtown sidewalks as pedestrian activity areas. The City may therefore allow temporary commercial use of available public spaces, to the extent that they do not conflict with the free movement of traffic or create a hazard to the public, and to the extent that these uses complement the general nature of the downtown area and enhance the pedestrian nature of the sidewalks as areas of human activity and interaction. The commercial encroachments for which permits may be issued shall be as set forth in this section, subject to the conditions set forth below.

1. **General Requirements.** In addition to the requirements of Section 8-03-002-0005.A hereof, all commercial encroachments included in this Section 0005.D shall be subject to the following requirements.
  - a. No furniture, fixture or appurtenance shall block the visibility of any traffic control device or sign.
  - b. Each permittee will be responsible for keeping the area of the activity neat and clean, and for cleaning the area encompassed by the permit and the adjacent gutter at the end of each day's use. This includes sweeping and pickling up any refuse or trash within the area and any refuse or trash generated within the area which may have blown away into the surrounding area, and washing the sidewalk if there have been spills. Sufficient trash receptacles in or near the area of activity shall be provided by the permittee, as well as arrangements for trash pickup.
  - c. No permittee shall conduct sales or other business with occupants of vehicles or other traffic on the street, nor shall the operation of the permitted business interfere with the smooth flow of traffic on the street.
  - d. No permittee shall use any public address system, amplified music or sound system in connection with the permitted right-of-way encroachment.
  - e. When not in use, or at the latest by the close of each business day, all equipment, furniture and other appurtenances shall be removed entirely from the public right-of-way.
2. **Sidewalk Cafes.** Recognizing that sidewalk cafes may animate the downtown environment and complement retail and cultural activities in the North Downtown Business District, the City may issue permits for sidewalk cafes encroaching into the public right-of-way. Where there is adequate room and the conditions of this Ordinance may be fulfilled. In addition to those requirements set forth elsewhere, restaurants may be issued permits for such encroachments under the following circumstances and conditions:
  - a. All services to support sidewalk cafes shall be supplied from within the building. As such use is considered an extension of an existing business, which presumably has permanent signing, no additional advertising or signs of any sort shall be allowed in the permitted encroachment area.

- b. Pedestrian walkways shall not be split. The use area shall extend laterally no further than the building frontage of the business with which it is associated (including the outdoor seating area of any restaurant or café not located within the public right-of-way).
- c. The permittee shall demarcate the permitted use area with a portable barrier, of a size and type compatible with the décor of the surrounding area, which creates a clear and continuous division between the use area and the public portion of the sidewalk.
- d. The permittee shall maintain at all times a clear passage, conforming to the requirements of Section 8-03-002-0005.A.1, adjacent to the permitted use area, between the public circulation portion of the sidewalk and every public access doorway into the adjacent building.
- e. Permitted sidewalk cafes shall not obstruct sidewalk pedestrian traffic or create public health and safety hazards and shall leave a minimum clear distance of 5 feet (1.52) of sidewalk pedestrian area in all places. All walkways within the confines of a sidewalk café shall be level with the public sidewalk and accessible for the physically disabled. City Ordinance No. 1807 (the City's no-smoking ordinance) shall apply to permitted sidewalk cafes as if such outdoor cafes were completely enclosed restaurants. Permits for sidewalk café encroachments shall be issued for no more than an eight (8) month period. Applications for sidewalk café encroachments shall be submitted no more than six (6) month and no less than thirty (30) days prior to the time for which such permit is requested, unless special circumstances require otherwise (but in no event more than one (1) year nor less than fourteen (14) days prior to such time). (Ord. 1952, 09/02/97)

### 3. Peddlers.

- a. General: A peddler's portable stand, cart or other vehicle shall be completely self contained in a single unit, including trash receptacle, fuel, water and waste containers; when in operation, such cart shall be positioned on the curb side of the sidewalk, facing the pedestrian traffic, a minimum of two (2) feet (0.61) from the back of the curb and five (5) feet from the property line. No such peddler's cart or vehicle shall be motorized or self propelled, except as may be necessary for the aid or convenience of a physically impaired peddler; nor shall any peddler's cart, stand or other vehicle be greater than 5.5 feet in width and 11 feet in length. No free standing or supplemental signs or other advertising shall be permitted other than such sign as is on or affixed to the cart, stand, etc. (Ord. 1952, 09/02/97)
- b. Consent: As a condition to obtaining an encroachment permit hereunder, a peddler shall demonstrate the consent of: all directly competing businesses within one hundred forty-five (145) feet of such peddler's proposed operation; and eighty percent (80%) of all businesses and owners of real property within one hundred forty-five (145) of such peddler's proposed operation. Such consent may be demonstrated in each case by: a written consent signed by such person; or a failure to respond, within twenty-one (21) days of mailing, to a letter requesting such consent, sent to such person by certified mail, return receipt requested, on which the City Engineer (211 W Aspen AVE, Flagstaff, AZ 86001) is designated in the return address and in which the addressee is directed to respond directly to the City Engineer. All such mailings, if any, shall be performed by, and at the sole cost and expense of, the peddler-applicant. In order for a failure to respond within the required time period to be considered a consent, the letter must state, in at least 12-point bold capital letters, the following:

**FAILURE TO RESPOND TO THIS LETTER WITHIN 21 DAYS OF THE POSTMARK DATE WILL BE CONSIDERED A CONSENT.**

Any falsification of a consent required or obtained hereunder shall subject a permit obtained thereby to revocation by the City without further notice.

- c. Permit fee: Prior to, and as a condition of, the issuance of a peddler's encroachment permit hereunder, the applicant shall pay to the City such fee as shall be periodically set by the City Manager for the use of the right-of-way, which may include but not be limited to the City's

costs of maintenance and replacement of the right-of-way surface and related streetscape furniture and facilities, and any additional costs incurred as a result of the applicant's intended use of the right-of-way, for the following year; said fee may be adjusted annually in accordance with changes in such costs and other factors included in its determination. As a further condition to the maintenance of each peddler's encroachment permit hereunder, the permittee/peddler shall pay to the City the then-current annual fee as aforesaid, on or before each anniversary of the issuance of his or her permit. Any permit with respect to which the aforesaid annual fee has not been paid by thirty (30) days following an anniversary thereof shall be subject to revocation by the City without further notice.

- d. **Permit applications:** Applications for peddlers' encroachments shall be submitted no more than ninety (90) days and no less than thirty (30) days prior to the time for which such permit is requested; unless special circumstances require otherwise (but in no event more than six (6) months nor less than fourteen (14) days prior to such time). In the event that the City shall receive more than one completed application for a peddler's location (with all of the information required by Section 0006.C hereof and the consents required by subparagraph "b" of this paragraph 3) before a permit therefore has been issued, and if such location is not subject to an automatic renewal of an existing permit under subparagraph "e" below, the City shall forthwith notify each applicant by mail and request of each the submission of a sealed proposal for the use of such location by a date certain not less than fifteen (15) days from the date of said notice. Each such applicant wishing to do so shall, by the date set forth in such notice, submit to the City Engineer a sealed proposal setting forth an amount that the applicant proposes to pay for such permit, in addition to and not in lieu of the annual permit fee described in subparagraph "c" above. On the date specified, each proposal shall be opened and the permit for said location awarded to the responsible applicant whose proposal is most advantageous to the City, with due regard to both the nature of the propose activity and the payment proposed. A permit for encroachment by a peddler shall be issued for a period of no more than three (3) years.
  - e. **Permit renewal:** Any peddler encroachment permit issued pursuant to this section may, subject to all of the provisions of this Ordinance, be automatically renewed, provided that (i) the permittee has, during the permitted period, complied with all of the provisions of the City Code, including but not limited to this Division 8-03-002 (Downtown Encroachment Policy), Division 3-05-004 (Sales Tax Ordinance), and Chapter 3-03 (Peddlers Ordinance), (ii) the permittee submits, no more than six (6) months nor less than fourteen (14) days prior to expiration of the permit, a written request for such renewal, including any changes to the information included with his/her original permit application (pursuant to Section 0006 hereof) or last renewal since the time of such application or renewal, and (iii) no such permit may be renewed more than two (2) times following its initial term, without a new application and all other requirements that may apply to new applications generally. (Ord. 1952, 09/02/97)
  - f. **Stationary peddlers:** The City shall determine the number and location of suitable sites for stationary peddlers within the North Downtown Business District in consultation with the Downtown Area Redevelopment Advisory Committee (DARAC), taking into consideration public demand, the number and situation of other peddlers and other encroaching uses, and such other factors as they may deem relevant. For a period of one (1) year following the effective date of this ordinance, no more than five (5) stationary peddlers shall be permitted in the North Downtown Business District; thereafter, the City, in consultation with DARAC (or successor organization), may set maximum limits on the number of stationary peddlers permitted in the North Downtown Business District.
  - g. **Mobile peddlers:** In addition to the general requirements for Peddlers, a mobile peddler shall move along the sidewalk maintaining approximately five (5) feet of sidewalk for pedestrians between the peddler and the property line (face of building or back of sidewalk). No mobile peddler shall remain in one location more than fifteen (15) minutes in any one location during a sixty (60) consecutive minute period of time. Each relocation shall be fifty (50) feet or greater from the previous location.
4. **Ineligible Commercial Encroachments.** Not all potential commercial uses will be permitted. Examples of encroaching uses that will not be permitted include: (1) Those that would significantly

increase the congestion on the sidewalks and impede the free flow of pedestrian traffic; (2) uses that would present a potential hazard for those using the public way (vehicular as well as pedestrian); (3) uses that are incompatible with the pedestrian-oriented nature of the downtown sidewalks; and (4) uses that create excessive noise, air pollution or other effects which cannot be contained within the permitted space.

5. **Not applicable to special events.** The requirements of this Section 8-03-002-0005.D shall not apply to special events within the meaning of Section 8-03-002-0005.E following.
6. **No Sales in Street.** No sales or other commercial activity shall be permitted in the street other than taxicabs, busses, and similar transportation services.

- E. **SPECIAL EVENTS.** A wide variety of activities may be permitted on a one-time or annual basis. These may be as diverse as area wide sidewalk sales, musical or theatrical events or parades. Because of the variety of possible activities involved, the requirements for each must be considered on an individual basis, with due consideration for the City's policies and goals for the downtown public areas and the general requirements described above. The activities involved in a permitted special event may, with sufficient justification, be allowed at locations other than those spaces defined with respect to the permitted encroachments described elsewhere in this Ordinance. Sidewalk sales along North San Francisco Street and North Beaver Street will not be allowed, unless parking is prohibited between the sidewalk swellings along the side of the street where the sidewalk sale is being conducted or that said streets are completely closed to vehicular traffic and approved detours are provided.

All street closures and associated detours shall be coordinated with the City's Engineering Division. All cost associated with the establishing, maintaining and removal of traffic control devices shall be the sole responsibility of the encroachment permittee. (Ord. 1922, 12/17/96)

(Ord. No. 1952, Amended, 09/02/97)

#### **SECTION 8-03-002-0006 PERMIT REQUIREMENTS AND PROCESS:**

- A. **GENERAL.** Each applicant for a permit shall provide sufficient information to assure the City that the proposed encroachment will conform to the intent of this encroachment ordinance. Each applicant shall provide a map of suitable scale, showing a description and dimensions of the proposed encroachment, with sufficient detail for the City to determine its impact on the right-of-way and adjacent properties. The application shall also include: the proposed dates of the beginning and end of the period of use and the days/dates and the times of day of use within this period; the applicant's name, mailing address, and work and home telephone numbers; and the names and telephone numbers of all persons who will be conducting a activities at the site.
- B. **PERMIT FEES.**
1. Except as may be otherwise expressly provided herein, there shall be no fees charged for the application and processing of encroachment permits. (Ord. 1952, 09/02/97)
  2. In consideration of their use of the public right-of-way and the increased costs of maintenance and replacement of the surface thereof as a result of such activities, peddlers using the public right-of-way shall pay an annual permit fee determined by, and in accordance with, the provisions of Section 0005.D.3 hereof. (Ord. 1952, 09/02/97)
  3. A recorded document fee will be charged for encroachments by structures. Said fee shall be the amount charged by the Coconino County Recorder's office at the time the permit is recorded.
- C. **PARTICULAR SUBMISSIONS.** As part of its permit application, each applicant shall, in addition to the foregoing, provide copies or other proof of the following:
1. Applicable City and state sales tax and business licenses.
  2. The Certificate(s) of Insurance and indemnification described in Section 8-03-002-0005.A.2.c hereof.

3. All applicable Health Department approvals that may be required for preparation and serving of food.
4. All other safety related approvals that may be required for the proposed activities.

**D. PERMIT PROCESS.** Permit applications shall be reviewed and granted by the following process:

1. Permits for encroachments by structures shall require DRB review, which may set additional conditions, as it deems appropriate, before approving the issuance of a permit. Once approved by DRB, and assuming the fulfillment of any further conditions it may have set, the City's Engineering Division will prepare and issue the encroachment permit.
2. All permits shall be signed by the permittee and his/her signature acknowledged. All permits will become effective when countersigned by the City Engineer or his designee. The City shall record all permits for encroachment by structures in the land records of the Coconino County Recorder. All other permits will be filed in the City's Engineering Division.
3. For all encroachments other than encroachments by structures (for which DRB approval is required under Paragraph 1 hereof ), the City Engineer or his designee, shall evaluate all permit applications and issue all permits hereunder.

**E. APPEALS.**

1. Any permit applicant aggrieved by a decision relating to issuance or denial of a permit hereunder may, within twenty-one (21) calendar days of such decision, file a written application with the City engineer for review of the decision by the City Council.
2. The City Council will hear any such appeals within two (2) regularly scheduled meeting, and either affirm, reverse, or modify the decision regarding such permit application. (Ord. 1922, 12/17/96)

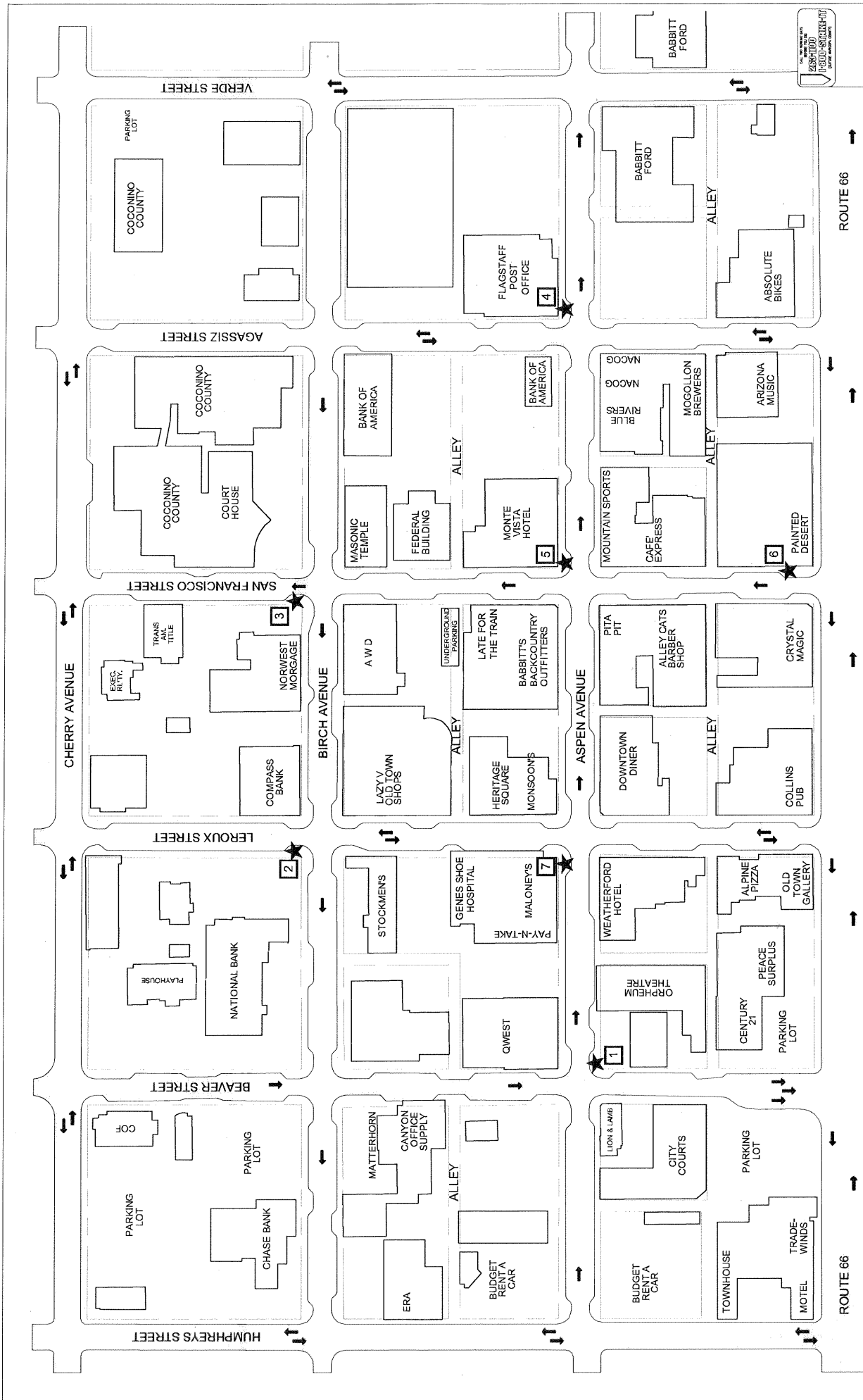
(Ord. No. 1952, Amended 09/02/97)

**SECTION 8-03-002-0007      EXISTING ENCROACHMENTS:**

- A. Any structural encroachment that either:
  1. Was constructed in good faith pursuant to a building permit and/or encroachment permit validly issued by the City prior to the effective date of this Ordinance; or
  2. Verifiably existed prior to June 13, 1972; shall be considered permitted hereunder and shall not be subject to the requirements of this Ordinance.
- B. All existing encroachments that have not been previously approved by the City are subject to removal, unless an appropriate encroachment permit is issued therefore upon a submitted and sufficient application within sixty (60) calendar days from the enactment of this Ordinance. The City makes no representation or guarantee that any permit for an existing encroachment will be granted; each will be considered in accordance with the conditions and policies set forth herein.
- C. A new encroachment permit will be required for the replacement, expansion or reconstruction of any existing permitted encroachment. (Ord. 1922, 12/17/96)

**SECTION 8-03-002-0008      CONFORMITY WITH OTHER ORDINANCES AND PROVISIONS OF THE CITY CODE:**

- A. This Encroachment Ordinance shall in no way excuse or alleviate the requirements and conditions of any other codes, ordinances, laws, rules or regulations.
- B. In the event that any part of this Ordinance shall conflict with any other ordinance or other part of the City Code of the City of Flagstaff in effect at the time of enactment of this Ordinance, then this Ordinance shall prevail, but only to the extent of such conflict. (Ord. 1922, 12/17/96)



PROJECT TITLE: NDBD Locations

Rev 02/24/09

CITY OF FLAGSTAFF, ARIZONA  
ENGINEERING DIVISION

ENGINEER OF WORK

DESIGN: [ ] DATE: [ ] SCALE: [ ]

CHECKED: [ ] N/A: [ ] VERB: [ ]

ACCOUNT NO. [ ] PROJECT NO. [ ]

REVISIONS

NO.	DATE	DESCRIPTION	BY

1 PEDDLER ENCROACHMENT